

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Southwest Media, LLC	)	Facility I.D. No. 59494
Licensee of Station KCSG(TV)	)	NAL/Acct. No. 0841420007
Cedar City, Utah	)	FRN: 0006917454

**NOTICE OF APPARENT  
LIABILITY FOR FORFEITURE**

**Adopted: October 24, 2007****Released: October 26, 2007**

By the Chief, Video Division, Media Bureau:

**I. INTRODUCTION**

1. In this *Notice of Apparent Liability for Forfeiture* (“NAL”) issued pursuant to Section 503(b) of the Communications Act of 1934, as amended (the “Act”), and Section 1.80 of the Commission’s Rules (the “Rules”),<sup>1</sup> by the Chief, Video Division, Media Bureau pursuant to authority delegated under Section 0.283 of the Rules,<sup>2</sup> we find that Southwest Media, LLC (the “Licensee”), licensee of Station KCSG(TV), Cedar City, Utah (the “Station”), apparently willfully and repeatedly violated Sections 73.3526(e)(11)(i), (e)(11)(ii), and (e)(7) of the Rules, by failing to place in the Station’s public inspection file all required TV issues/programs lists, records concerning compliance with the children’s programming commercial limits, and EEO public file reports.<sup>3</sup> In addition, the Licensee apparently willfully and repeatedly violated Section 73.3526(e)(11)(iii) of the Rules by failing to publicize the existence and location of its Children’s Television Programming Reports. Based upon our review of the facts and circumstances before us, we conclude that the Licensee is apparently liable for a monetary forfeiture in the amount of ten thousand dollars (\$10,000).

**II. BACKGROUND**

2. Section 73.3526 of the Rules requires a commercial broadcast licensee to maintain a public inspection file containing specific types of information related to station operations.<sup>4</sup> Subsection 73.3526(e)(11)(i) provides that a TV issues/programs list is to be placed in a commercial TV broadcast station’s public inspection file each calendar quarter. In addition, pursuant to subsection 73.3526(e)(11)(ii), each commercial television broadcast station is required to place in its public inspection file, on a quarterly basis, records sufficient to allow substantiation of the licensee’s certification, in its renewal application, of its compliance with the children’s television commercial limits imposed by Section 73.670 of the Rules.<sup>5</sup> Moreover, Section 73.3526(e)(7) provides that a station is to

<sup>1</sup> 47 U.S.C. § 503(b); 47 C.F.R. § 1.80.

<sup>2</sup> See 47 C.F.R. § 0.283.

<sup>3</sup> See 47 C.F.R. §§ 73.3526(e)(11)(i), 73.3526(e)(11)(ii), and 73.3526(e)(7).

<sup>4</sup> See 47 C.F.R. § 73.3526.

<sup>5</sup> 47 C.F.R. § 73.670. This rule limits the amount of commercial matter that a commercial television station may air during children’s programming to 10.5 minutes per hour on weekends and 12 minutes on weekdays.

place in its public inspection file an EEO public file report annually, on the anniversary of the date its renewal application is due to be filed.

3. Under the Commission's rules implementing the Children's Television Act of 1990 (CTA),<sup>6</sup> each television broadcast station licensee has an obligation, during its license term, to air programming that serves the educational and informational needs of children through both the licensee's overall programming and programming "specifically designed" to educate and inform children (core programming).<sup>7</sup> The Commission's rules require commercial licensees to provide information to the public about the shows they air to fulfill their obligation. Subsection 73.3526(e)(11)(iii) of the Rules requires each commercial television broadcast station to prepare and place in its public inspection file a Children's Television Programming Report (FCC Form 398) for each calendar quarter reflecting, *inter alia*, the efforts it has made during the quarter to serve the educational needs of children. As set forth in subsection 73.3526(e)(11)(iii), licensees are also required to file the reports with the Commission and to publicize for the public the existence and location of the reports.

4. On May 31, 2006, the Licensee filed its license renewal application (FCC Form 303-S) for Station KCSG(TV) (the "Application") (File No. BRCT-20060531AIJ). In response to Section IV, Question 3 of the Application, the Licensee stated that, during the previous license term, it had failed to timely place in its public inspection file all of the documentation required by Section 73.3526 of the Commission's Rules. In Exhibit 17, the Licensee indicated that in preparation for the filing of its Application, it discovered that several required documents were not prepared or were not placed in the public inspection file. Specifically, the Licensee reported that TV issues/programs lists for the third and fourth quarters of 2002, the first, third and fourth quarters of 2003, and all of 2004 and 2005 were missing from the public file. Moreover, the Licensee stated that records concerning compliance with the children's programming commercial limits for the first and second quarters of 2004 and the 2003 and 2004 EEO public file reports were missing from the public file. The Licensee maintained that all missing records have been prepared based on the Station's records, and that remedial measures were taken to ensure future compliance.

5. In response to Section IV, Question 10 of the Application, the Licensee also stated that it had failed to publicize the existence and location of the Station's Children's Television Programming Reports, as set forth in Section 73.3526(e)(11)(iii) of the Rules. In Exhibit 24, the Licensee indicated that it discovered that it had not publicized the existence and location of the Station's Children's Television Programming Reports during the third and fourth quarters of 2002, the first quarter of 2003, and the first quarter of 2005. The Licensee asserted that it has implemented procedures to ensure compliance with Section 73.3526(e)(11)(iii) in the future.

### III. DISCUSSION

6. This *NAL* is issued pursuant to Section 503(b)(1)(B) of the Act. Under that provision, any person who is determined by the Commission to have willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a forfeiture penalty.<sup>8</sup> Section 312(f)(1) of the Act defines willful as "the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law.<sup>9</sup> The legislative history to Section 312(f)(1) of the Act clarifies that this definition of willful applies to both

<sup>6</sup> Pub. L. No. 101-437, 104 Stat. 996-1000, *codified at* 47 U.S.C. Sections 303a, 303b and 394.

<sup>7</sup> 47 C.F.R. § 73.671.

<sup>8</sup> 47 U.S.C. § 503(b)(1)(B); *see also* 47 C.F.R. § 1.80(a)(1).

<sup>9</sup> 47 U.S.C. § 312(f)(1).

Sections 312 and 503(b) of the Act,<sup>10</sup> and the Commission has so interpreted the term in the Section 503(b) context.<sup>11</sup> Section 312(f)(2) of the Act provides that “[t]he term ‘repeated,’ when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.”<sup>12</sup>

7. The Commission’s *Forfeiture Policy Statement* and Section 1.80(b)(4) of the Rules establish a base forfeiture amount of \$10,000 for violation of Section 73.3526.<sup>13</sup> In determining the appropriate forfeiture amount, we may adjust the base amount upward or downward by considering the factors enumerated in Section 503(b)(2)(D) of the Act, including “the nature, circumstances, extent and gravity of the violation, and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”<sup>14</sup>

8. Based on the record before us, it appears that several required documents were missing from the Station’s public inspection file. Specifically, the Licensee reported that TV issues/programs lists for the third and fourth quarters of 2002, the first, third and fourth quarters of 2003, and all of 2004 and 2005 were missing. In addition, the Licensee indicated that records concerning compliance with the children’s programming commercial limits for the first and second quarters of 2004 and the 2003 and 2004 EEO public file reports were missing from the public file. Moreover, the Licensee reported that it failed to publicize the existence and location of the Station’s Children’s Television Programming Reports during the third and fourth quarters of 2002, the first quarter of 2003, and the first quarter of 2005. Considering the record as a whole, we believe that a \$10,000 proposed forfeiture is appropriate for the apparent willful and repeated violations of Sections 73.3526(e)(11)(i), (e)(11)(ii), (e)(11)(iii), and (e)(7) of the Rules.

#### IV. ORDERING CLAUSES

9. Accordingly, IT IS ORDERED, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Section 1.80 of the Commission’s Rules, that Southwest Media, LLC is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of ten thousand dollars (\$10,000) for its apparent willful and repeated violation of Sections 73.3526(e)(11)(i), (e)(11)(ii), (e)(11)(iii), and (e)(7) of the Commission’s Rules.

10. IT IS FURTHER ORDERED, pursuant to Section 1.80 of the Commission’s Rules, that, within thirty (30) days of the release date of this *NAL*, Southwest Media, LLC SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

11. Payment of the proposed forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the *NAL*/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, at P.O. Box 358340, Pittsburgh, Pennsylvania 15251-8340. Payment by overnight mail may be sent to Mellon Bank/LB 358340, 500 Ross Street, Room 1540670, Pittsburgh,

<sup>10</sup> See H.R. Rep. No. 97-765, 97<sup>th</sup> Cong. 2d Sess. 51 (1982).

<sup>11</sup> See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991).

<sup>12</sup> 47 U.S.C. § 312(f)(2).

<sup>13</sup> See *Forfeiture Policy Statement and Amendment of Section 1.80(b) of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17113-15 (1997) (“*Forfeiture Policy Statement*”), recon. denied, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80(b)(4), note to paragraph (b)(4), Section I.

<sup>14</sup> 47 U.S.C. § 503(b)(2)(D); see also *Forfeiture Policy Statement*, 12 FCC Rcd at 17100-01; 47 C.F.R. § 1.80(b)(4); 47 C.F.R. § 1.80(b)(4), note to paragraph (b)(4), Section II.

Pennsylvania 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6229.

12. The response, if any, must be mailed to Office of the Secretary, Federal Communications Commission, 445 12<sup>th</sup> Street, S.W., Washington, D.C. 20554, ATTN: Barbara A. Kreisman, Chief, Video Division, Media Bureau, and MUST INCLUDE the NAL/Acct. No. referenced above.

13. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the respondent submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the respondent's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

14. Requests for full payment of the forfeiture proposed in this *NAL* under the installment plan should be sent to: Associate Managing Director- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.<sup>15</sup>

15. IT IS FURTHER ORDERED that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Southwest Media, LLC, 845 East Red Hills Parkway, St. George, Utah 84770, and to its counsel, Henry A. Solomon, Esquire, Garvey Schubert Barer, 1000 Potomac Street, N.W., Fifth Floor, Washington, D.C. 20007.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman  
Chief, Video Division  
Media Bureau

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<sup>15</sup> See 47 C.F.R. § 1.1914.